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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,033	07/09/2003	Samuel J. Adducci	LCB380	1538

32915 7590 04/15/2005

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,033

Applicant(s)

ADDUCCI, SAMUEL J.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2003 and 27 January 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) 10-18 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-9 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 09 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07-09-2003.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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DETAILED ACTION

This Office action is in response to the application filed July 9, 2003 and the election filed January 27, 2005.

Election/Restriction

Applicant's election with traverse of Group I, i.e., claims 1-9, in the reply filed on January 27, 2005 is acknowledged. The traversal is on the grounds that "the Office action does not provide an appropriate explanation as to the different field of search for each group... It is believed that it is necessary to search for the 'distinct' network racks in various subclasses of class 211 where are pertinent to all of the 'distinct' network racks exists". This is not found persuasive because although each grouping of claims has been classified in the same class and subclass, it has been shown in the restriction requirement that each grouping is patentably distinct from each other, e.g., group I does not require the particulars of the posts as required in group II and thus a different search is needed for group II. *Accordingly*, the fact that each grouping is classified in the same class does not negate the fact that an overall search of each grouping is different and thus causes a serious burden on the examiner.

Thus, the requirement is still deemed proper and is therefore made FINAL.

Claims 10-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions, there being no allowable generic or linking claim.

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Priority

It is noted that this application appears to claim subject matter disclosed in prior Application No. 60/394,972, filed July 10, 2002. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e) or 120. See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. Also, the current status of all nonprovisional parent applications referenced should be included.

Drawings

The drawings are objected to because Figure 2 should contain assembling lines.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,323,916 (Salmon '916).

Salmon '916 discloses a rack comprising a base (30); a pair of upstanding vertical posts (22A and 22B) extending from the base (30); a top channel (28) horizontally extending between and connecting the vertical posts (22A, 22B); the base (30) including a front upstanding flange (perpendicular to 26A), a rear upstanding flange (perpendicular to 26B) and at least one intermediate upstanding flange (perpendicular to 26A') whereby the flanges are generally parallel to each other and to the top channel and extend *substantially* continuously from one post to the other post; each of the flanges includes a horizontal flange (26A, 26B, and 26A') extending from its upper edge.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,976,014 (Brown '014).

Brown '014 discloses a rack comprising a base (at 42 and 43) which defines a front and a bottom base portion; a pair of upstanding vertical posts (16) extending from the base; a top channel (at 34, 36) horizontally extending between and connecting the vertical posts (16); the base including a front upstanding flange, a rear upstanding flange and at least one intermediate upstanding flange (see the Bottom of Figure 2) whereby the flanges are generally parallel to each other and to the top channel and extend *substantially* continuously from one post to the other post; the upstanding flange from the front base portion generally parallel to one another and one generally abuts the upstanding flange from the bottom base portion.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown '014, alone.

Brown discloses the rack as advanced above whereby elements 12, 14, and 16 are welded together (see column1, line 63).

The claim differs from Brown '014 in requiring the base portions to be welded together.

Although Brown '014 does not disclose that the base portions are welded together, Brown '014 does teach the use of welding elements together. *Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have welded the base portions together for increased structural support and stability of the rack.

Claims 2, 4, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown '014 as applied to claims 1, 3, and 5 above, and further in view of Salmon '916.

Brown discloses the rack as advanced above.

The claim differs from Brown '014 in requiring: (a) the flanges to each have a horizontal flange extending from its upper edge (claims 2, 4, and 6); and (b) the horizontal flanges to extend in both perpendicular directions of the intermediate flange (claim 7).

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Salmon '916 discloses the rack as advanced whereby horizontal flanges extend from both perpendicular directions from the intermediate flange (i.e., the intermediate flange is defined as both members in the middle of the base.

With respect to (a) and (b), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the flanges of Brown '916 with upper horizontal flanges for increased structural rigidity of the rack.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon '916 as applied to claims 1 and 2 above, and further in view of U.S. Patent No. 6,006,925 (Sevier '925).

Salmon '916 discloses the rack as advanced above.

The claim differs from Salmon '916 in requiring at least one aperture in each flange.

Sevier '925 teaches the use of at least one aperture (42) in the flanges (25).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided each of the changes in Salmon '916 with an aperture therein for increased organizational capabilities of the rack.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon '916 as applied to claims 1 and 2 above, and further in view of U.S. Patent No. 6,179,133 (Reece '133).

Salmon '916 discloses the rack as advanced above.

The claim differs from Salmon '916 in requiring a base angle gusset mounted on at least one flange.

Reece '133 teaches the use of a gusset (92).

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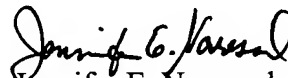
Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Salmon '916 with a gusset, as taught by Reece '133, for increased structural support and stability of the rack.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
April 11, 2005